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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ROBERT FLOYD,

Case No. 6:21-cv-1590

Plaintiff,

COMPLAINT

v.

**(Employee Retirement Income
Security Act of 1974, 29 U.S.C. § 1132(a))**

**LIFE INSURANCE COMPANY OF
NORTH AMERICA,**

Defendant.

I. NATURE OF THE CASE

1.

This is an action for a determination of plaintiff's right to receive short-term disability ("STD") benefits from defendant.

2.

This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*

3.

In 2016, Plaintiff Robert Floyd was diagnosed with Common Variable Immunodeficiency (CVID). In December 2020, plaintiff became disabled as the result of his vulnerability to COVID-19 infection, and submitted a claim for STD benefits through his employer’s STD plan, which is insured by the defendant. Defendant wrongfully denied plaintiff’s claim.

II. PARTIES

4.

Robert Floyd. Plaintiff Robert Floyd is an adult and a resident of Marion County, Oregon. Plaintiff was an employee of IGT Global Solutions Corp. (“IGT”) within the meaning of ERISA § 3, 29 U.S.C. § 1002(6).

5.

Plaintiff is a “participant,” as defined by ERISA § 3, 29 U.S.C. § 1002(7), of the IGT STD plan (the “STD Plan”), which is insured by the defendant through a policy of insurance issued to IGT.

6.

Life Insurance Company of North America. Defendant Life Insurance Company of North America is a foreign insurance company licensed and authorized to sell

insurance, including disability insurance, in Oregon. Defendant is an “administrator” of the STD Plan within the meaning of ERISA § 3, 29 U.S.C. § 1002(16). Defendant is a “fiduciary” of the STD Plan within the meaning of ERISA § 3, 29 U.S.C. § 1002(21) and with respect to plaintiff’s STD claim at issue in this case. Defendant also pays the fully insured STD benefits provided through the STD Plan.

III. JURISDICTION AND VENUE

7.

Jurisdiction of this Court arises pursuant to ERISA, 29 U.S.C § 1001, et seq., ERISA § 502, 29 U.S.C. 1132(a)(1)(B), (a)(3) and (e)(1). Venue is proper under ERISA § 502, 29 U.S.C. § 1132(e)(2) because, *inter alia*, defendant resides or may be found in this district.

IV. STATEMENT OF FACTS

8.

Plaintiff began to work for IGT in June 2012.

9.

In 2016, plaintiff was diagnosed with Common Variable Immunodeficiency, a disease which leaves him at high risk of severe illness and death if he becomes infected with severe acute respiratory syndrome coronavirus 2 “(COVID-19”).

10.

Plaintiff’s treating physician, Dr. James Sweet, confirmed by letter dated December 22, 2020, that Plaintiff “cannot work at all any more since he is at high risk for

death if he contracts COVID-19,” and that, if working from home were not an option, Plaintiff “must not work at all until he receives the Covid-19 vaccine.” Accordingly, Plaintiff ceased work effective December 22, 2020, due to disability, i.e, severe and unacceptable health risk, including death, should he become infected with COVID-19. Plaintiff remained disabled until May 31, 2021, when the Johnson & Johnson COVID-19 vaccine, which he received on May 17, 2021, reached its maximum efficacy.

11.

In or about December 2020, Plaintiff applied for benefits through the STD Plan for his disability that commenced on December 22, 2020.

12.

By letter dated January 11, 2021, Defendant denied Plaintiff’s STD claim, asserting that plaintiff was not disabled under the terms of the STD Plan.

13.

By letter dated June 3, 2021, plaintiff submitted a request for review of defendant’s decision denying his STD claim, pursuant to ERISA.

14.

By letter dated July 14, 2021, defendant denied Plaintiff’s appeal and upheld its claim denial.

15.

All conditions precedent to the filing of this action have been performed, were excused, or would be futile.

16.

Plaintiff is entitled to approval of his STD claim effective December 22, 2020, and continuing through May 31, 2021.

V. CLAIMS

FIRST CLAIM -- CLAIM FOR BENEFITS AND ENFORCEMENT OF RIGHTS UNDER ERISA § 502(A)(1)(B), 29 U.S.C. § 1132(A)(1)(B)

17.

Plaintiff realleges paragraphs 1 through 16, above.

18.

Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), plaintiff is entitled to recover benefits due under the STD Plan that defendant wrongfully withheld commencing December 22, 2020, and to enforce his rights under the terms of the STD Plan.

SECOND CLAIM -- Claim for Attorney Fees and Costs Under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1)

19.

Plaintiff realleges paragraphs 1 through 18, above.

20.

Plaintiff is entitled to his attorney fees and costs under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).

VI. REQUEST FOR RELIEF

WHEREFORE, plaintiff requests that this Court:

- (1) Enter judgment in favor of plaintiff for damages in an amount to be proven at trial due to defendant's failure to provide benefits due under the STD Plan;
- (2) Enter judgment in favor of plaintiff and against defendant establishing plaintiff's right to receive benefits under the STD Plan and enforcing the terms of the STD Plan pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);
- (3) Award such other relief as is just and proper pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3);
- (4) Award plaintiff his attorney fees pursuant to ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2); and

DATED: November 1, 2021.

s/ Megan E. Glor
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